

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**
JUSTIN EDMOND,

Plaintiff,

**5:20-cv-1609
(GLS/ATB)**

v.

DET. RUDOLPH REED et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Justin Edmond
Pro Se
18-B-2950
Cayuga Correctional Facility
P.O. Box 1186
Moravia, NY 13118

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following an Order and Report-Recommendation (R&R) by Magistrate Judge Andrew T. Baxter duly filed January 11, 2021. (Dkt. No. 4.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections¹ having been filed, and the court having reviewed the

¹ On January 20, 2021 and January 22, 2021, plaintiff filed letters notifying the court that he does wish to file any objections to the R&R or file an amended complaint. (Dkt. Nos. 5,

R&R for clear error, it is hereby

ORDERED that the Order and Report-Recommendation (Dkt. No. 4) is **ADOPTED** in its entirety; and it is further

ORDERED that the complaint (Dkt. No. 1) is **DISMISSED without prejudice, but without the opportunity to amend** as against defendant Timothy Roulan and the Clerk is directed to terminate him; and it is further

ORDERED that the complaint (Dkt. No. 1) is **DISMISSED without prejudice, but with the opportunity to amend** as against defendant Donald Butler as set forth in the R&R; and it is further

ORDERED that plaintiff's claims of malicious prosecution are **DISMISSED without prejudice, but without the opportunity to amend** unless the plaintiff can document that the criminal proceeding has terminated in his favor; and it is further

ORDERED that the following claims remain in this action: (1) excessive force/false arrest pursuant to the Fourth Amendment against defendants Det. Rudolph Reed and Det. M.J. Kern; and (2) illegal search and seizure/invasion of privacy pursuant to the Fourth Amendment and state law against defendant Dep Giles; and it is further

6.) In an abundance of caution, the court will afford the plaintiff an opportunity to amend his complaint notwithstanding his letters, if he so chooses.

ORDERED that plaintiff may file an amended complaint within **thirty (30) days** of the date of this Order; and it is further

ORDERED that, should plaintiff choose to amend, any such amended complaint will supersede and replace in its entirety the previous complaint and that no portion of any prior complaint shall be incorporated into the amended complaint by reference; and it is further

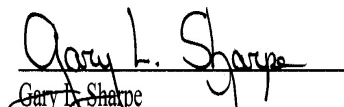
ORDERED that, if plaintiff files an amended complaint in the time permitted, the same will be referred to the Magistrate Judge for further review; and it is further

ORDERED that, if plaintiff does not to file an amended complaint in the time permitted, the case shall be referred to the Magistrate Judge for any orders relating to service of the complaint on the remaining defendants; and it is further

ORDERED that the Clerk provide a copy of this Order to plaintiff in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

January 29, 2021
Albany, New York


Gary L. Sharpe
U.S. District Judge